

SPECIAL EDUCATION & FAMILY COURT ORDERS

WHAT YOU NEED TO KNOW



VCBA

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ROADMAP

- OVERVIEW OF THE SPECIAL EDUCATION PROCESS
 - What is an IEP and how do you read it?
- INTERSECT BETWEEN SPECIAL EDUCATION & FAMILY COURT ORDERS
 - General do's and don'ts for public schools when working with divorced parents
 - Stay Away Orders and Split Visitation Orders
 - Why "sharing equally" can be disastrous for the disabled child of divorced parents
 - What can you ask to include in Custody Orders that would help ensure the disabled child is not a casualty of the divorce
- Ask Your Questions Throughout

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SPECIAL EDUCATION PROCESS

- All public schools are required to provide students who have been determined to be eligible for special education a “free and appropriate public education” or FAPE.
- There is a process that public schools have to adhere to in determining (1) if a child is eligible for special education, and if so, (2) what the child needs for FAPE.
- The process is dictated by numerous state and federal laws.

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ASSESSMENT PROCESS

- School Districts must offer an assessment plan to parents before they can assess the Student, and a parent must consent to the assessment plan for the process to begin. In the absence of consent, school districts have the option of going to a due process hearing to assess a student without parental consent.
- When assessing students suspected of having a disability, school districts must assess the student in “all areas of suspected disability.” This can include a multitude of assessments including cognition, academic achievement, behavior, social/emotional, fine and gross motor, health, speech and language, etcetera.

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ASSESSMENT PROCESS

- After thoroughly assessing a student, the school district's assessors have to prepare a report that contains all of their assessment data
- Students must be assessed at least every three years and prior to:
 - becoming eligible for an IEP;
 - a change in eligibility;
 - a change in placement.

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IEP PROCESS

- Once assessments have been completed, an Individualized Education Program ("IEP") team meeting must be held.
- The IEP team, which includes the parent of the child, has to develop the IEP document and make an offer of FAPE.
- Parents must consent to the IEP for the district to implement it.

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IEP PROCESS

- The IEP team determines the student’s present levels of performance, the goals the child requires, and the special education services and placement the child needs to make progress on those goals.

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STUDENT INFORMATION AND SERVICES						Page 1 of 15
Ventura County Special Education Local Plan Area (SELPA) Individualized Education Program (IEP)						
Student _____		D.O.B. _____ Age _____ Grade _____ Sex _____		Meeting Date _____		
Parent/Guardian/Surrogate _____		Case Manager _____		Meeting Purpose _____		
Address _____		Case Manager Phone _____		Teacher (Elem. only) _____		
Phone Home _____ Cell _____ Work _____		Case Manager Email _____		Student ID # _____		
E-mail _____		School Attending _____		SSID# _____		
Parent/Guardian _____		Home School _____		District of Service (DOS) _____		
Address _____		Residency _____		District of Responsibility _____		
Phone Home _____ Cell _____ Work _____		Native Language _____		English Learner Status: <input type="checkbox"/> TBD <input type="checkbox"/> EO <input type="checkbox"/> IFEP <input type="checkbox"/> EL (see ELD page) <input type="checkbox"/> RFP <input type="checkbox"/> Eligible for Migrant Program		
E-mail _____		English Learner Status: <input type="checkbox"/> TBD <input type="checkbox"/> EO <input type="checkbox"/> IFEP <input type="checkbox"/> EL (see ELD page) <input type="checkbox"/> RFP <input type="checkbox"/> Eligible for Migrant Program				
Dates Initial Entry (0-22) _____ Next Review _____ Initial IEP _____ Next Triennial _____ Implementation (this plan)* _____ Exit Date _____ Exit Reason _____ * Contingent upon full IEP team approval of plan.		Agency Services (outside of IEP) <input type="checkbox"/> None <input type="checkbox"/> Regional Center (RC) <input type="checkbox"/> CCS <input type="checkbox"/> Mental Health (DMH) <input type="checkbox"/> Social Services <input type="checkbox"/> Rehabilitation (DR) <input type="checkbox"/> Other Agency		Ethnicity/Race Hispanic/Latino _____ Race: _____		
Eligibility (Check Primary) <input type="checkbox"/> Intellectual Disabilities <input type="checkbox"/> Other Health Impairment <input type="checkbox"/> Deafness (LI) <input type="checkbox"/> Speech/Language Impairment <input type="checkbox"/> Multiple Disability <input type="checkbox"/> Visual Impairment (LI) <input type="checkbox"/> Specific Learning Disability <input type="checkbox"/> Traumatic Brain Injury <input type="checkbox"/> Orthopedic Impairment(LI) <input type="checkbox"/> Autism <input type="checkbox"/> Established Medical Disability <input type="checkbox"/> Hearing Impairment (LI) <input type="checkbox"/> Emotional Disturbance (3-4 year olds) <input type="checkbox"/> Deaf/Blindness (LI) Secondary (if any) _____ LI = Low Incidence <input type="checkbox"/> Not Eligible (explanation/comments) _____		Health / Behavior <input type="checkbox"/> N/A <input type="checkbox"/> Specialized Physical Health Care Service(s) <input type="checkbox"/> Health &/or Emergency Care Plan Date _____ <input type="checkbox"/> Behavior Intervention Plan Date _____		In General Education _____ Percent of the school day that the student is in the general education classroom/setting (ages 3-22). Physical Education <input type="checkbox"/> General <input type="checkbox"/> Adapted <input type="checkbox"/> Modified General <input type="checkbox"/> Exempt <input type="checkbox"/> Specially Designed <input type="checkbox"/> N/A		
		Special Transportation <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, specify level: <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 Special Requirements: _____ Emergency Drop off: _____		Out of District Transfer Transfer to: _____ Date: _____		
				Dismissed From Service: _____ Service: _____ Service: _____		
Special Education Services and/or Related Services						
All services on this IEP will continue until next review unless otherwise specified under End Date.						
1.Primary _____	Begin Date (current yr)	End Date (optional)	Location	Frequency	Total Minutes	Provider
2. _____						
3. _____						
4. _____						
5. _____						
6. _____						
7. _____						
8. _____						
9. _____						
10. _____						
11. _____						
12. _____						
<small>Note: Services will only be provided on regular school days, per the student's school calendar, unless otherwise specified. For services with a frequency of "weekly," services may not be provided if school is not in session on the day(s) student is scheduled to receive services. For services with a frequency of "monthly" the total minutes will be prorated for months with less than 4 weeks of school. Services with "yearly" frequency include minutes provided during ESY.</small>						
Copy to: <input type="checkbox"/> District Office <input type="checkbox"/> General Education/Cumulative File <input type="checkbox"/> Case Manager <input type="checkbox"/> Parent/Adult Student <input type="checkbox"/> Related Services <input type="checkbox"/> Agency <input type="checkbox"/> Other _____						

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PRESENT LEVELS OF ACADEMIC ACHIEVEMENT AND FUNCTIONAL PERFORMANCE
Ventura County SELPA IEP

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Student Name _____ D.O.B. _____ Meeting Date _____

Describe present levels of performance in terms of general education expectations. Scores alone are not sufficient. Include specific strengths and weaknesses from the results of all evaluations including any state and/or district-wide assessments, as well as classroom performance. Areas of performance affected by the student's disability must be addressed in IEP; if not, provide rationale in the appropriate box below.

Parent/Student Educational Concerns and Comments: Academic: Reading <input type="checkbox"/> Annual Goal(s)	Cognitive Functioning <input type="checkbox"/> Annual Goal(s)	Vocational/Prevocational/Community Access <input type="checkbox"/> Annual Goal(s)																																			
Academic: Written Language <input type="checkbox"/> Annual Goal(s)	Communication <input type="checkbox"/> Annual Goal(s)	Self-Care/Independent Living <input type="checkbox"/> Annual Goal(s)																																			
Academic: Mathematics <input type="checkbox"/> Annual Goal(s)	Motor Abilities and/or Recreation/Leisure <input type="checkbox"/> Annual Goal(s)	Health Status/Summary Hearing: Date _____ <input type="checkbox"/> Passed <input type="checkbox"/> Failed Vision: Date _____ <input type="checkbox"/> Passed <input type="checkbox"/> Failed Corrective Lenses: <input type="checkbox"/> Yes <input type="checkbox"/> No Medication: <input type="checkbox"/> Yes <input type="checkbox"/> No if yes, list below: Overall Health: _____																																			
Statewide Assessment Results <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Area</th> <th>Test</th> <th>Score</th> <th>Level</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td>ELA</td> <td></td> <td>na</td> <td></td> <td></td> </tr> <tr> <td>Math</td> <td></td> <td>na</td> <td></td> <td></td> </tr> <tr> <td>Science</td> <td></td> <td>na</td> <td></td> <td></td> </tr> </tbody> </table>	Area	Test	Score	Level	Date	ELA		na			Math		na			Science		na			Social Emotional/Behavioral Functioning <input type="checkbox"/> Annual Goal(s)	Impact of Disability Describe how student's disability affects student's involvement and progress in the general education curriculum and/or participation in age appropriate activities: _____															
Area	Test	Score	Level	Date																																	
ELA		na																																			
Math		na																																			
Science		na																																			
English Language Assessment Results <table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr><td>Listening</td><td></td><td></td><td></td><td></td></tr> <tr><td>Speaking</td><td></td><td></td><td></td><td></td></tr> <tr><td>Reading</td><td></td><td></td><td></td><td></td></tr> <tr><td>Writing</td><td></td><td></td><td></td><td></td></tr> <tr><td>Oral Language</td><td></td><td></td><td></td><td></td></tr> <tr><td>Written Language</td><td></td><td></td><td></td><td></td></tr> <tr><td>Overall</td><td></td><td></td><td></td><td></td></tr> </tbody> </table>	Listening					Speaking					Reading					Writing					Oral Language					Written Language					Overall					Additional Information: <input type="checkbox"/> Annual Goal(s)	
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Overall																																					

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ANNUAL GOALS
Ventura County SELPA IEP

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Student Name _____ D.O.B. _____ Meeting Date _____

Area of Need: _____ **Responsible Personnel:** _____

Reason for goal (Describe current needs in this area. Summarize progress on last year's goal in this area, if applicable.):

Baseline (must include observable behavior or skill, current level of accuracy and consistency, & measurement instrument):

For EL students, the goal is linguistically appropriate. Specify language of instruction: English Spanish Other: _____

Annual Goal 1

Enables student to be involved/progress in general curriculum and/or Addresses other educational needs resulting from the disability

Category: _____ Standard Number: _____ Domain: _____

Area of Need: _____ **Responsible Personnel:** _____

Reason for goal (Describe current needs in this area. Summarize progress on last year's goal in this area, if applicable.):

Baseline (must include observable behavior or skill, current level of accuracy and consistency, & measurement instrument):

For EL students, the goal is linguistically appropriate. Specify language of instruction: English Spanish Other: _____

Annual Goal 2

Enables student to be involved/progress in general curriculum and/or Addresses other educational needs resulting from the disability

Category: _____ Standard Number: _____ Domain: _____

Parents will receive a report of progress on these goals at the intervals specified on the Agreement/Attendance page.

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LEAST RESTRICTIVE ENVIRONMENT

Ventura County SELPA IEP

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Student Name _____ D.O.B. _____ Meeting Date _____

Promotion and Retention Standards (Grades 2-8) Regular district criteria Individualized criteria, specify (reading for gr. 2 & 3, English/language arts and math for all other grades): _____

Special Factors Affecting Learning and Placement Do any of the following special factors apply? If yes, describe interventions, strategies and/or supports.

Yes No Behavior interferes with learning (of self or others): _____

Yes No Language needs of English Learner (EL) Grades TK-12 only: _____

Yes No Braille instruction for students with blindness or visual impairment: _____

Yes No Communication needs, including students who are deaf or hard of hearing impaired: _____

Yes No Assistive technology devices and services: _____

Yes No Low Incidence Equipment to be acquired: _____

Program Considerations

The IEP Team considered the following factors to determine the least restrictive environment for the student:

- The level of his/her individual needs as reflected on this IEP
- Removal from general education only when the nature or severity of the educational needs are such that education in general classes with supplementary aids and services cannot be achieved satisfactorily
- Placement with age-appropriate peers and participation with students without disabilities to the maximum extent appropriate in non-academic and extracurricular activities
- Any potential harmful effect on the social and personal needs, the level of educational functioning, or the quality of services which s/he needs

Check each program option discussed:

- General education class(es) with special education monitoring, consultation, collaboration, accommodations or modifications
- General education class(es) with special education services provided individually or in small groups in the classroom
- General education class(es) with special education services provided individually or in small groups outside the classroom
- Special education class(es) with part-time integration for academics in general education classroom
- Special education class(es) with integration into non-academic and/or extracurricular activities in general education classrooms or settings.
- Full-time special education class(es) in a public school
- Full-time special education class(es) in a Nonpublic School (NPS)
- Home/hospital instruction
- (For preschoolers only) Related Services only
- Other Residential Treatment Center

Offer of Free Appropriate Public Education (FAPE) - Describe student's overall school program, including supports needed for extracurricular activities (if any):

If placement in other than general education, provide rationale: _____

If placement in other than home school, provide rationale: _____

Other placement rationale: _____

Additional supports for student: _____

Supports needed for school personnel (i.e. consultation, training, planning time): _____

Support needed for transition between programs (i.e. special education to general education; preschool to kindergarten; middle school to high school): _____

See Meeting Notes

Extended School Year Yes No If yes, fill out the services box below: _____ days ESY Transportation Yes No Level: 1 2 3 4 5 See Meeting Summary for add'l info.

Special Education Services and/or Related Services	Frequency	Minutes	Yes	No	Level: <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5	Frequency	Minutes

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SPECIAL EDUCATION LITIGATION

- The California Department of Education contracts with the California Office of Administrative Hearings (OAH) to provide administrative law judges (ALJ) and a forum to resolve special education litigation disputes.
- “Due Process Hearings” are essentially bench trials that are heard decided by an ALJ. (Cal. Educ. Code § 56000 et seq.)
- There is no discovery, no depositions, no pre-trial briefs, etcetera – a witness list, and the evidence parties intend to use, must be exchanged and filed with OAH 5 business days before the hearing.

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SPECIAL EDUCATION LITIGATION

- The jurisdiction of OAH is limited to IDEA/special education matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)
- OAH does not have jurisdiction to entertain claims based on other non-IDEA or California special education statutes such as Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) or Section 1983 of Title 42 United States Code, or the Americans with Disabilities Act.

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ISSUES PUBLIC SCHOOLS ENCOUNTER WITH FAMILY LAW ORDERS & DIVORCED PARENTS

- STAY AWAY ORDERS –
 - The public school is not a party and has no obligation to enforce the order.
 - Public schools should *not* conduct 2 IEP meetings and I advise not too. All IEPs are via zoom except in rare circumstances. It is NOT advisable nor rationale to convene 2 IEP meetings because Mom or Dad has a stay away order.

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ISSUES PUBLIC SCHOOLS ENCOUNTER
WITH FAMILY LAW ORDERS & DIVORCED
PARENTS

- **STAY AWAY ORDERS –**
 - Stay away orders should have an exclusion for parents' joint participation in a zoom IEP team meeting.
 - In my experience, the mother is the active participant in the disabled child's education in over 90% of cases.

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ISSUES PUBLIC SCHOOLS ENCOUNTER
WITH FAMILY LAW ORDERS & DIVORCED
PARENTS

- **ORDERS WHERE PARENTS "SHARE EQUALLY"...**
 - The law requires public schools to get parental consent for an assessment of their child and parent consent to implement the child's IEP.
 - What happens if Mom gives consent, and Dad "actively says no"?
 - OAH does not rely upon their own decisions as binding authority

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ISSUES PUBLIC SCHOOLS ENCOUNTER WITH FAMILY LAW ORDERS & DIVORCED PARENTS

- ORDERS WHERE PARENTS “SHARE EQUALLY”...
 - In one case, a school district was found to have violated Mother’s right to a timely assessment because it delayed the assessment process in an effort to get Father’s consent, and Father clearly said “No”
 - In another case, the child’s special education assessment was ordered expunged because Father convinced the school to assess the child in the absence of giving the mother the opportunity to consent or dissent to an assessment plan.

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ISSUES PUBLIC SCHOOLS ENCOUNTER WITH FAMILY LAW ORDERS & DIVORCED PARENTS

- ORDERS WHERE PARENTS “SHARE EQUALLY”...
 - Public schools are required to provide all notices to both parents when they are divorced. This gives both parents the opportunity to consent or dissent.
 - If one parent consents and the other dissents, I advise public schools to tell parents that until parents can agree to say yes or no, the public school *will not proceed*.
 - Public schools should not have to “pick” which parent they will “listen to” – the consenting parent or nonconsenting parent?

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ISSUES PUBLIC SCHOOLS ENCOUNTER WITH FAMILY LAW ORDERS & DIVORCED PARENTS

- ORDERS WHERE PARENTS “SHARE EQUALLY” ...
 - The public school can file a due process hearing to override lack of consent to an assessment plan, and the failure to consent to an IEP.
 - Parents can also file a due process hearing complaint against the school district – and they can do so separately and in the absence of the other parent when they “share equally” in the rights regarding their child’s special education

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ISSUES PUBLIC SCHOOLS ENCOUNTER WITH FAMILY LAW ORDERS & DIVORCED PARENTS

- ORDERS WHERE PARENTS “SHARE EQUALLY” ...
 - When parents disagree, the child is left in “limbo.”
 - If either parent sends a writing to the public school asking to revoke consent to special education, the public school has no choice but to exit the child, even if the other parent disputes. The public school cannot file a complaint with OAH to override the revocation. (34 CFR 300.300(b)(4).

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ISSUES PUBLIC SCHOOLS ENCOUNTER WITH FAMILY LAW ORDERS & DIVORCED PARENTS

- ORDERS WHERE PARENTS “SHARE EQUALLY”...
 - Custody orders that require parents to “meet and confer” and come to some agreement, are not helpful. One parent says she did and the other says it never happened.
 - Custody orders should include one parent who has the final say if parents cannot agree – with clear and concise language.

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ISSUES PUBLIC SCHOOLS ENCOUNTER WITH FAMILY LAW ORDERS & DIVORCED PARENTS

- ORDERS WHERE PARENTS “SHARE EQUALLY”...
 - Custody orders that have “pick up and drop off” at the public school are inadvisable for the child. How does that effect the child?
 - Sometimes, school is the only place that is consistent, predictable, and not chaotic.

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ISSUES PUBLIC SCHOOLS ENCOUNTER WITH FAMILY LAW ORDERS & DIVORCED PARENTS

- HOW DO YOU KNOW IF YOUR CLIENT IS THE PARENT WHO IS ACTING IN THE CHILD'S BEST INTEREST?
 - Ask your client to write a request for a copy of their child's education records (public schools have to provide them within 5 business days of receipt of a written request)
 - Read the record – you may see a discrepancy between what parent reports / asks for and what the public school is stating the child needs

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SPECIAL EDUCATION LITIGATION

Questions?



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